IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.48 OF 1990

The Oriental Insurance Co. Ltd. ...Appellant
Vs.
Shri Sudam Nana Sable & Ors. ...Respondents

Mrs Anita A. Agarwal for the Appellant.
Shri V.V. Khemka with Shri S.R. Kudroli for the Respondent No.1.

CORAM : ABHAY S. OKA, J.

DATE : JUNE 08, 2006.

JUDGMENT:

1. The submissions of the learned Counsel appearing for the parties were heard on the last date and today Appeal is kept for dictation of the judgment. The Appellant- The Oriental Insurance Company Ltd. is the insurer of the vehicle involved in the accident. The Appellant has taken exception to the judgment and award dated 26th July, 1989 passed by the learned Member of the Motor Accident Claims Tribunal for Greater Bombay. The Respondent No.1 herein is the original claimant. The Respondent Nos.2 and 3 are the original opposite party Nos.1 and 2 to the Claim Petition.

2. With a view to appreciate the submissions made by the learned Counsel appearing for the parties, it will be necessary to refer to the facts of the case in

brief. The Respondent No.1-Claimant was working as cleaner with the Respondent No.3 and he was doing duty on Truck No.MRL 2407 on the relevant date i.e. on 20th January, 1983. At the relevant time, the truck was loaded with two big bundles of cable. The truck was being driven on the Western Express Highway from Trombay to Borivali. The case of the Respondent No.1 is that the truck was being driven in a rash and negligent manner by the driver. When the truck reached the spot opposite Patel Alluminium Co. at Malad, the driver lost the control over the vehicle as a result the vehicle mounted on the road divider and dashed against an electrical pole. As a result of the accident, the Respondent No.1 received serious injuries and was hospitalised in Bhagwati hospital at Bombay. As a result of the injuries sustained in the accident, the right leg of the Respondent No.1 was required to be amputed.

3. The Respondent No.2 filed written statement contending that on the date of the accident he was not the owner of the truck as the tuck was sold on 24th September, 1977 in favour of the Respondent No.3. Subsequently, the Respondent No.3 was impleaded as a party. A contention was raised by the Appellant that as a result of the transfer of the vehicle by the

insured without notice to the Appellant, the policy had lapsed and therefore, the Appellant-Insurance Company is not liable to pay compensation.

4. By the impugned judgment and award, the learned Member of the Tribunal directed the Appellant and the Respondent No.2 herein to jointly and severally pay compensation of Rs.01,50,000/- together with the interest at the rate of 12 per cent per annum from the date of Application till realisation together with proportionate costs.

5. Mrs Agarwal, the learned Counsel appearing for the Appellant has invited my attention to the evidence of the Respondent No.1. She invited my attention to the documents at Exhibits 21 and 22 which are placed on record. She pointed out that Exhibit 21 discloses that on 24th August, 1977 the truck in question was sold to the Respondent No.3 by the Respondent No.2. She pointed out that Exhibit 22 discloses that the truck was sold on that day for the price of Rs.54,035/-. She pointed out that substantial amount was paid by the Respondent No.3 prior to the accident and only a nominal amount was paid in September 1983 after the accident. She submitted that as a result of delivery of possession of the truck, the ownership of

the truck stood transferred in favour of the Respondent No.3 on the same day i.e. on 24th August, 1977 and merely because registration was not transferred in the name of the Respondent No.3 will not make any difference. She placed reliance on a decision of Division Bench of this Court in the case of The Oriental Fire & Genl. Ins.Co.Ltd., Kolhapur Vs. Ratnabai Balu Kadam & Ors. (1986 ACJ Page 729) and on another decision of the Division Bench in the case of Mohd. Abdul Waheed Mohd. Nakim Khan Vs. Shyam Behari Rameshwar Kalvar & Ors (1983 ACJ Page 369). She submitted that insurance policy does not run with the vehicle and it is a contract between the insured and the insurer and the moment the vehicle is transferred, the insurance policy lapses. The learned Counsel appearing for the Respondent No.1 -Original Claimant invited my attention to the evidence on record. He has relied upon various decisions of the Apex Court and this court a reference to which is made in the later part of this judgment. He submitted that the Appellant-Insurance Company cannot be exonerated in view of the settled law.

6. I have considered the submissions. The Division Bench of this Court in the case of The Oriental Fire and General Insurance Co. Ltd. (supra)

has placed reliance on earlier judgment of another Division Bench Mohd. Abdul Waheed Mohd. Nakim Khan(supra). In paragraph No.2 of the said decision the Division Bench has held thus:

> "2. Taking first the appeal of the insurance company, on the admitted facts on record, it shows that the original owner Patel had not given the company intimation of sale or transfer of the vehicle to opponent No.2. It will therefore have to be held that the stand taken by the insruance company that it is not liable to pay compensation in the present case is legally jsutified. It is not disputed that the view on the point taken by this court in three successive judgments, namely those reported in Gulab Bai Damodar Tapse V. Peter K. Sudner, 1975 ACJ 100 (Bombay), Kishan Pandurang Kagde V. Baldey Singh Gian Singh 1977 Mah.LJ 656 Shyam Behari Rameshwar Kalvar, 1983 ACJ 369 (Bombay), still stands as good law in view of the said decisions. It is more than clear that although the insurance is in respect of the vehicle, the insurance policy does not run with the vehicle. It is a contract between

the insured and the insurer and the moment the vehicle is transferred the insurance policy lapses. The only exception to this proposition of law is section 103-A (1) of the Act which states that if at the time of the transfer, the transferee applies in the prescribed form to the insurer, for the transfer of the certificate of insurance and the policy described in the certificate, in favour of the transferee to whom the motor vehicle is proposed to be tansferred, an d if within fifteen days of the receipt of such application by the insurer, the insurer fails to intimate the insurer’s refusal to tansfer the certificate and the policy, the certificate of insurance and the policy is deemed to have been transferred in favour of the transferee with effect from the date of its transfer. As stated earlier, admittedly, there as no such application made by opponent No.4 to the insurance company. Hence, the insurance company cannot be held liable to pay compensation to the applicant. To that extent, therefore, the decision of the tribunal will have to be set aside and it is hereby set aside. The appeal of the insurance

company, therefore, stands allowed and it is held that the original opponent No.3 is not liable to pay any part of the compensation awarded by the Tribunal. However, in the circumstances of the case the appellant insurance company will be entitled to costs of the appeal only from respondent Nos.4 and 5 i.e. original opponent Nos.2 and 4."

7. The learned Counsel appearing for the Respondent No.1 has invited my attention to the decision of the Apex Court in the case of G. Govindan Vs. New India Assurance Co. Ltd. & Ors. (1999 ACJ Page 781). The question before the Apex Court was whether the insurance policy lapses and secondly, liability of insurance company to third parties ceases when the insured vehicle is transferred and no intimation is given to the Insurance Company. The Apex Court has quoted with approval a decision of Full Bench of Andhra Pradesh High Court in the case of Madineni Kondaiah Vs. Yaseen Fatima (1986 ACJ 1(AP)). The Apex Court has extensively quoted the view taken by the Division Bench of the Andra Pradesh High Court. The relevant part of the Andra Pradesh High Court judgment is as under:

"But where the third party risk is concerned so long the obligations under the statute are not fulfilled, as contemplated under section 31 read with section 94, he continues to have the insurable interest till such obligations are fulfilled. Any prudent purchaser should take steps to get the policy transferred to him under section 103. The insurer is bound to accept the transfer and can only refuse to consent on specified grounds. It is clearly an impracticable view to take that on passing of property in the vehicle, the policy lapses and the obligation under section 94 of the Act ceases. In fact as observed by Supreme Court the policy is to the vehicle and hence normally it should run with the vehicle. It is just tot expect a reasonable time for the transferor to make the necessary arrangement to notify the transfer under section 31 and secure the certificate under section 29-A within the time mentioned in those provisions. If this is not allowed, the moment the vendor receives the money and puts the vehicle in possession of the transferee, the latter is not in a position to use the vehicle in view of section 94 till a fresh policy is obtained.

He cannot take the vehicle to his house passing through any public place. When the transferor is liable to pay penalty under section 31 and also liable to be prosecuted under section 112 for not notifying the transfer, we are clearly of the opinion such statutory liability makes him to retain the insurable interest as the liability subsists till he discharges the statutory obligations. We disagree with the view expressed in N.Kanakalakshmi Vs. R.V. Subba Rao, 1972 (1) APLJ 249.

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The registration of the vehicle in the name of the transferee is not necessary to pass title in the vehicle. Payment of price and delivery of the vehicle makes the transaction complete and the title will pass to the purchaser. **When the policy of insurance obtained by the original owner of the vehicle is composite one covering the risks for his person, property (vehicle) and the third party claim, on passing of title the transferee cannot enforce his claim in respect of any loss or damage to**

his person and vehicle unless there is a novation. So far the third party risk is concerned the proprietary interest in the vehicle is not necessary and the public liability continues till the transferor discharges the statutory obligation under section 29-A and 31 read with section 94 of the Act. Till he complies with the requirement of section 31 of the Act the public liability will not cease and that constitutes the insurable interest to keep the policy alive in respect of the third party risks concerned. It must be deemed that the transferor allowed the purchaser to use the vehicle in a public place in the said transitional period and accordingly till the compliance of section 31, the liability of the transferor subsists and the policy is in operation so far it relates to the third party risks. We answer the second question accordingly." (Emphasis supplied)

8. In paragraph No.17 the Apex Court held thus:

"17. **As between the two conflicting views of the Full Bench judgments noticed above, we**

> **prefer to approve the ratio laid down by the Andhra Pradesh High Court in Madineni Kondaiah's case (supra) as it advances the object of the legislature to protect the third party interest. We hasten to add that the third party here will not include a transferee whose transferor has not followed procedure for transfer of policy.** In other words, in accord with the well-settled rule of interpretation of statutes we are inclined to hold that the view taken by the Andhra Pradesh High Court in Madineni Kondaiah's case is preferable to the contrary views taken by the Karnataka and Delhi High Courts (supra) even assuming that two views are possible on the interpretation of relevant sections as it promotes the object of the legislature in protecting the third party (victim) interest. The ratio laid down in the judgments of Karnataka and Delhi High Courts (supra) differing from Andhra Pradesh High Court is not the correct one." (Emphasis supplied)

9. My attention has been invited to the another decision of the Apex Court in the case of Rikhi Ram & Anr. Vs. Sukhrania & Ors. (2003 ACJ Page 534). In

paragraph No.2 of the decision the Apex Court has reproduced the question which reads as under:

> "2. The question which arises in this appeal is whether in the absence of an intimation of transfer as required under section 103-A of the Act, the liability of the insurer to pay compensation to the third party ceases. Earlier, there was a conflicting view of the High Courts as regards the question whether the insurance policy lapses and consequently the liability of insurer ceases when the insured vehicle was transferred and no intimation as prescribed under section 103-A of the Act was given to the insurer."

The Apex Court in the said decision approved its earlier decision in the case of G.Govindan Vs. New India Assurance Co. Ltd.(supra) and held thus:

> "6. On an analysis of sections 94 and 95, we further find that there are two third parties when a vehicle is transferred by the owner to a purchaser. The purchaser is one of the third parties to the contract and other third party is for whose benefit the vehicle

> was insured. So far, the transferee who is the third party in the contract, cannot get any personal benefit under the policy unless there is a compliance of the provisions of the Act. However, so far as third party injured or victim is concerned, he can enforce liability undertaken by the insurer."

Thus, the law on the point is now very clear. In so far as a third party other than the insured is concerned, he can always enforce the liability undertaken by the insurer notwithstanding the transfer of the vehicle effected by the insured.

10. Turning to the facts of the case it will be necessary to see the evidence led by the Respondent No.2. One Amarnath Kapoor, a Manager of the Respondent No.2-Corporation at the relevant time was examined as a witness. He proved documents at Exhibits 21 and 22 in evidence. In his cross-examination the said witness has stated as under:

> "The vehicles were sold and money recovered some time in instalments and some times in a lump. Our company used to insure vehicle whenever a vehicle was owned by us. We did

> not inform the insurance company that the vehicle was sold away. The Insurance Policy was for a duration of one year. The Insurance policies were taken for the subsequent years i.e. for 1977-78, 1978-79 and thereafter. The policies were issued in the name of our company."

The stand which is taken on oath is that the insurance policy of the truck was renewed as the Respondent No.2 continued to be the owner of the vehicle. On the date of accident, the Respondent No.2 continued to be the registered owner in record of the R.T.O.

11. In view of the law laid down by the Apex Court in the aforesaid cases, no fault can be found with a view taken by the learned Member of the Tribunal that the Appellant- Insurance Company was liable to satisfy the award which is passed against the registered owner. No case for interference is made out. Appeal is dismissed. The Appellant will pay costs of Appeal to the Respondent No.1.

JUDGE